



3636

<b>AMENDMENT TRANSMITTAL LETTER</b>			Attorney Docket 20005.14			
Application Serial Number:	Filing Date:	Examiner:	Group Art Unit:			
09/992,690	November 13, 2001	Harris, Stephanie	3636			
Invention: POSITIONING MECHANISM FOR A MASSAGE CHAIR						
<b>TO THE COMMISSIONER OF PATENT AND TRADEMARKS:</b> Transmitted herewith is an amendment in the above-identified application. The fee has been calculated as shown below.						
<b>CLAIMS AS AMENDED</b>						
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	NUMBER OF EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	31	MINUS	31		\$18	\$0
INDEP. CLAIMS	4	MINUS	4		\$84	\$0
<p>___ Petition is hereby made under 37 CFR 1.136(a) to extend the time for response to the Office Action of _____ to and through _____, comprising a/n extension of the shortened statutory period of:</p> <p>___ one month (\$110)      ___ three months (\$920) ___ two months (\$400)      ___ four months (\$1,140)</p>						
<b>TOTAL ADDITIONAL FEE FOR THIS AMENDMENT</b>						<b>\$0</b>
<p>___ Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted.</p> <p>___ A check in the amount of \$ _____ [which includes \$ _____ for the _____] is enclosed.</p> <p><input checked="" type="checkbox"/> The commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-1141, pertaining to 1) any filing fees under 37 CFR 1.16 for the presentation of extra claims; 2) any patent application processing fees under 37 CFR 1.17.</p> <p><input checked="" type="checkbox"/> Any additional extension of time required for the timely submission of this paper, the fees for which have not been previously paid, is hereby petitioned for and requested.</p> <p><u>1/3/2003</u> Date</p> <p><u>Steven G. Roeder, Reg. No. 37,227</u></p>						
<p><b>CERTIFICATE OF MAILING:</b> I hereby certify that this correspondence and all correspondence identified as accompanying this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on January 3, 2003.</p> <p><u>Steven G. Roeder, Reg. No. 37,227</u></p>						

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GROUP 3600



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1/14/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:      Roleder, et al.  
Serial No:                      09/992,690  
Filed:                              November 13, 2001  
For:                                Positioning Mechanism For A Massage Chair  
Examiner:                      Harris, Stephanie N.  
Attorney Docket:              20005.14

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) Art Unit  
) 3636  
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**AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

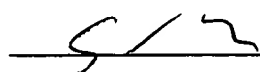
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JAN 09 2003  
**GROUP 3600**

Sir:

In response to the Restriction Requirement dated December 5, 2002, having a shortened statutory period for response set to expire on January 5, 2003, please amend the above-captioned patent application as provided below. This amendment and response is timely filed within the one-month deadline for response.

**CERTIFICATE OF MAILING UNDER 37 CFR §1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D. C. 20231, on this the 3<sup>rd</sup> day of January, 2003.

 STEVEN G. ROEDER, Attorney for Applicant--Registration No. 37,227

## ELECTION

The Applicants respectfully elect with traverse Species I, which Applicants believe comprises claims 1-15, 18-24 and 26-30. Applicants further respectfully submit that in addition to claim 1 being generic, at least claims 2-14, 18-19, 21-24 and 26-30 are generic claims which read on each of the Species I-IV as defined by the Patent Office.

## ARGUMENT

Applicants respectfully traverse the election requirement. The Patent Office has determined that the "application contains claims directed to the following patentably distinct species of the claimed invention: Species I: Figures 1, 3, 4A, 4B, 4C, 5, 6A, 6B, 6C, 7A and 7B; Species II: Figures 1, 3, 4A, 4B, 4C, 5, 6A, 6B, 6C, 8A and 8B; Species III: Figures 2, 7A and 7B; Species IV: Figures 2, 8A and 8B." The Applicants are finding difficulty in understanding the division of the Figures into the various categories of species set forth by the Patent Office. Consequently, the Applicants submit that the restriction requirement is improper and should be withdrawn as explained below.

The MPEP has established the criteria for when a restriction requirement is proper. "Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct. If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (MPEP 803).

Further, as stated in the guidelines of the MPEP for section 803, "examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the restriction requirement in most cases. Where plural inventions are capable of being viewed as related in two ways, both applicable criteria for distinctness must be demonstrated to support a restriction requirement." (Guidelines, MPEP 803). Additionally, "for purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02."

(Guidelines, MPEP 803). In the present action, the Patent Office has not demonstrated reasons or examples to support its conclusions. Moreover, the Patent Office has not provided any explanation of separate classification, separate status in the art or that a different field of search is required to examine the restricted claims together in one application.

Even if the different species could be shown to be patentably distinct by the Patent Office, the requirements for restriction have not been met. As set forth in MPEP 803, "there are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent; and

(B) There must be a serious burden on the examiner if restriction is required."

(MPEP 803).

First, the inventions are not independent as defined by the MPEP. "The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process." (MPEP 802.01).

The Patent Office appears to have drawn a distinction between the components illustrated in Figures 7A and 7B on the one hand, and Figures 8A and 8B on the other hand. To the contrary, Figures 7A, 7B, 8A and 8B illustrate various views of portions of the same guide receivers 98, 99 that are illustrated in Figures 1-6B. Each guide receiver 98, 99 includes an inner receiver portion 110 (illustrated in Figures 7A and 7B) and an outer receiver portion 112 (illustrated in Figures 8A and 8B). The inner receiver portion 110 and the outer receiver portion 112 are "usable together", forming a portion of the positioning mechanism 20 illustrated in each of Figures 1 through 6B. Thus, the structural components illustrated in Figures 7A, 7B, 8A and 8B are not unconnected in design, operation, or effect. Further, Figures 7A, 7B, 8A and 8B simply provide greater detail of what is already depicted in Figures 1 through 6B. As such, separate "species" are not illustrated in Figures 7A, 7B, 8A and 8B.

Moreover, the Patent Office appears to have drawn a distinction between the